

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TELCO GROUP, INC., individually and on
behalf of all persons similarly situated,

Plaintiff,

v.

AMERITRADE, INC., ADVANCED
CLEARING, INC., and AMERITRADE
HOLDING CORPORATION,

Defendants.

Case No. 8:05CV387

ORDER

This matter is before the court on defendants' motion to dismiss this case with prejudice for failure to prosecute. Filing No. 104. This court previously gave the plaintiff 90 days to file arbitration in this case, or the court would dismiss the case with prejudice. Filing No. 103. Plaintiff did not do so, in spite of the fact that it had ample time to seek arbitration. Plaintiff did not ask this court for additional time to seek arbitration. Thereafter, defendants filed this motion to dismiss with prejudice. Filing No. 104. Plaintiff responds, Filing No. 105, arguing the case should be dismissed without prejudice. The plaintiff failed to cite a single case supporting its argument that this case should be dismissed without prejudice. The court finds plaintiff's remaining arguments to lack merit. After giving consideration to the motion to dismiss, and being fully advised in the premises, the court rules as follows:

IT IS ORDERED that the motion to dismiss with prejudice, Filing No. 104, shall be and is hereby granted pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated this 13th day of February, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief District Court Judge